IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.5985 OF 2004

M/s.Girish Textile Industries).. Petitioner

Versus

Mahadeo Chandrarao Salvi and others).. Respondents

Mr.K.S.Bapat for the Petitioner.

Mr.I.R.Kulkarni for Respondent Nos.1 to 20.

Respondent No.21 formal party.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 23RD AUGUST 2004

P.C. :

. The Petition challenges the order of the 2nd Labour Court, Thane dated 12th March 2004 denying permission to Mr.M.V.Bhat, Advocate, to represent the employer i.e. the Petitioner herein. Mr.M.V.Bhat, who is a practising Advocate, sought to represent the Petitioner as an Officer of the Indian Merchants' Chamber (hereinafter referred to as "IMC"). The Labour Court, on considering the evidence before it, has held that the documents produced do not show that Mr.M.V.Bhat was entitled to represent the employer i.e. the Petitioner herein.

2. Mr.Bapat, learned Advocate for the Petitioner,

submits that although a person may not be an officer of an Association of Employers, meaning thereby employed by the Association, he can still be an office-bearer who can represent the employer in proceedings under the Industrial Disputes Act, 1947. He places reliance on the judgment of the learned Single Judge of this Court in the case of *Associated Cement Companies Ltd.* vs. *Associated Cement Staff Union and another*, **2001 III CLR 949** and the judgment of the Division Bench of this Court in *Associated Cement Staff Union* vs. *Associated Cement Companies Ltd. and others*, **2002 II LLJ 768**, confirming the judgment of the Single Judge. According to the learned Advocate, there was evidence on record to show that Mr.Bhat had been appointed to the Human Resource and Industrial Relations Committee (hereinafter referred to as "HRI Committee") of the IMC which meant that he was a functionary of a Committee which controlled the working and functioning of the Association and, therefore, was an office bearer of that Association.

3. Initially when an objection was raised by the workman before the Labour Court to the employer being represented by Mr.Bhat, Mr.Bhat produced a certificate showing that he was an ordinary member of the IMC from 22nd May 2001. Certain further documents were sought by the workman in order to ascertain whether Mr.Bhat was in fact an office bearer of the Association. However,

these documents were not forthcoming as, according to Mr.Bhat, they were in the custody of IMC and he was not in a position to produce these documents. In my view, the Labour Court has rightly held that there was no document on record to indicate that Mr.Bhat was an office bearer of the IMC. The only document produced on record by the employer was that his representative was an ordinary member of the IMC. According to Mr.Bapat, Mr.Bhat had produced on record a list showing the Committees of the IMC and this list shows that Mr.Bhat was appointed to the HRI Committee for the year 2003-2004. There is nothing on record either in the Petition or in the order of the Labour Court to show that this list was indeed produced before the Labour Court. However, presuming such a list was produced before the Labour Court, can it be said that a member of the HRI Committee would automatically be an office-bearer of the IMC ?

4. The Memorandum and Articles of Association of the IMC shows that it is a body incorporated under the Companies Act, 1956 and is a Limited Company. "Officer" has been defined in the Companies Act as under :-

> "2(30) "officer" includes any director, managing agent, secretaries and treasurers, manager or secretary, or any person in accordance with whose directions or instructions the Board of directors or any one or more of the director is or are accustomed

> to act, and also includes -
>
> (a) where the managing agent, or the secretaries and treasurers is or are a firm, any partner in the firm;
>
> (b) where the managing agent or the secretaries and treasurers is or are a body corporate, any director or manager of the body corporate;
>
> but, save in sections 477, 478, 539, 543, 545, 621, 625 and 633, does not include an auditor;"

As held by the learned Single Judge of this Court in the case of *Associated Cement Companies Ltd.* (supra), an "Officer" of an Association would mean an office-bearer of the Association. In the judgment cited above, the learned Single Judge has observed thus (vide paragraph 8) :-

> ".... Therefore, the expression "Officers" in Section 36 of the Industrial Disputes Act, cannot be identified with those in employment of the Employer whether Union or Association. They must connote something different or distinct. That would be satisfied if it is held that the expression "Officer" means those who constitute the executive of Association or in other words its office bearers. This to my mind makes it abundantly clear that what Parliament meant when the Act was enacted and even after its amendment vide amendment of 1971 that the word "office bearer", and "Officer" has been used differently from those in employment of the employer. All those in employment are workmen, except those engaged in supervisory, managerial or administrative work who also are workmen but are denied the protection of the Industrial Disputes Act. The definition of workman has not included the expression "Officer" unlike the Companies Act. I have therefore, no hesitation to hold that the expression Officer in S.36(2) would mean those holding Office in the Association namely

> controlling affairs of the Association and that would including the Executive Committee of the Association or its office bearers."
> (Emphasis supplied.)

While confirming this judgment, the Division Bench of this Court in *Associated Cement Staff Union* (supra), has held thus :-

> "10. In our view, it is clear that the word 'officer' was substituted as aforesaid so as to include, in relation to workmen, any member of the executive committee or other office bearer, probably having regard to the structure of trade unions. It does not, however, follow that because the word 'officer' in relation to representative of employer has not been amended, it excludes a mere member of the executive committee of the association of employers. The word 'officer' must be given its plain meaning, that is any person who holds an office of an appointed or elected functionary. We are, therefore, of the view that a member of the executive committee of an association of employers must be taken to be an officer of the employers association."
> (Emphasis supplied)

5. The ratio of both these judgments referred to above, is that a person who is an office bearer of the executive committee of an association of employers, can represent the employer in proceedings under the Industrial Disputes Act, 1947 (hereinafter referred to as the "ID Act"). In the present case, Mr.Bhat is appointed to the HRI Committee. This would not, in my view, automatically meant that he is an office bearer of the Executive Committee of the Association. Mr.Bapat harps on the fact that the Executive Committee can be

known by whatever terminology; as long as the person is a member of a Committee which controls the affairs of the Association, the person is permitted to represent the employer.

6. Clause 13 of the Memorandum of Articles of Association of the IMC defines the "Managing Committee" and it consists of the President, Vice President and 24 Elected Members. Sub-clause (11) of Clause 14 of the Memorandum of Articles of Association stipulates that a person who has been a member for a total period of atleast three years on the day of filing of his nomination shall be eligible to be elected to the Managing Committee. Admittedly, Mr.Bhat was enrolled as a member in 2001. Therefore, he could not have contested the elections to the Managing Committee. There is nothing on record to show that he could have been co-opted as a member of the Managing Committee. The Managing Committee is empowered to appoint Committees consisting of persons who are members as also persons other than members for specific subjects or branches of activities. It is on one such Committee that Mr.Bhat has been appointed. Therefore, in my view, a sub-committee cannot assume the same significance as an Executive Committee of a body. The Managing Committee or Executive Committee of an Association is a body which controls the affairs of the Association. The

HRI Committee cannot assume the same function as it is empowered to act by the Managing Committee or the Executive Committee. Section 36(2) of the ID Act permits an officer of the Association of employer to represent the employers. This Court vide the judgments cited above has widened the scope of the word "officer" to include office bearers of the Executive Committee of the Association in view of the changes made to Section 36(1) where a member of the executive or office bearer of a registered trade union can represent a workman.

7. In my view, mere appointment to the HRI Committee can by no stretch of imagination mean that Mr.Bhat has been appointed as an office bearer of the Association i.e. the IMC. That being so, I see no reason to interfere with the findings of the Labour Court. No doubt, the Labour Court has accepted the view taken by the Andhra Pradesh High Court in the case of *A.P.Power Diploma Engineers Association Generation Wing, Kothagudem Thermal Power Station Zone, Paloncha* vs. *Andhra Pradesh State Electricity Board, Hyderabad and another*, **1996 (1) LLJ 1082**, which view has not found favour by the Division Bench of this Court in *Associated Cement Staff Union* (supra). Despite this observation, the Labour Court has come to the conclusion that there is no document on record to show that Mr.Bhat was an office bearer of the Association. The employer was not

able to produce any such document even before this Court. In view of this, I see no reason to interfere with the order of the Labour Court. Hence, Writ Petition rejected.